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**ARIZONA CORPORATION COMMISSION**

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June 28, 2005

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Commissioner William Mundell  
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Arizona Corporation Commission  
**DOCKETED**

JUN 28 2005

RE: *Accipiter v. Cox Arizona Telecom et al.*  
Docket No. T-03471A-05-0064

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Dear Colleagues and Parties:

I am advised the parties to this docket are engaged in settlement discussions. The claims in this proceeding are for monetary and declaratory relief, and there is a generic docket dealing with Preferred Provider Agreements. Therefore, a consensual resolution of the complaint may be appropriate.

That being said, there are several aspects of this case that concern me, settlement or not. Shea-Sunbelt and Vistancia Communications are still not parties to the case, and those entities may have realized substantial payments, including the gross proceeds from customers' telecommunications bills. Further, the question of whether Sea-Sunbelt and/or Vistancia Communications are public service corporations would remain unresolved.

The concept of a "private" easement for utilities is in itself a novelty. In legal argument, Cox Communications asserts as a defense to the complaint that the City of Peoria granted a property right to Shea-Sunbelt and Vistancia as part of its police powers, thus shielding the transaction with Cox from Commission scrutiny.

Therefore, I am perplexed by the offer made by Shea-Sunbelt and Vistancia to "cancel" the private easement (*Letters from Michael M. Grant dated June 9, 2005 and June 16, 2005; Transcript of Procedural Conference of June 9, 2005, page 15*). Shea Sunbelt and Vistancia seem to assert a unilateral power to terminate the easement. Did Peoria create the easement to further a legitimate interest of its citizens? Was the grant of easement by Peoria gratuitous or part of a *quid quo pro* for concessions by the developer unrelated to telecommunications? What conclusions can be drawn by the inference that Shea Sunbelt and Vistancia that the City of Peoria will rubber stamp "termination" of the private easement?

These questions should be answered **in this docket** even if the Complainant's claims are resolved

Very truly yours,

Marc Spitzer  
Commissioner

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